IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 383 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RANCHHODBHAI HARIBHAI PATEL

Versus

KAUSHIKBHAI JAGUBHAI PATEL

Appearance:

MR RM VIN for Petitioner

MR KB PADIA for Respondent No. 1

MR SP DAVE APP for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 03/04/2001

ORAL JUDGEMENT

1. The present Revision Application has been filed under Section 397 of the Criminal Procedure Code (for short "Code"), 1973, challenging the judgement and order

dated 31.7.2000 recorded by the learned Sessions Judge, Surat.

2. The first respondent abovenamed had filed case No. 1/94 before the learned Executive Magistrate, Olpad, in Surat District under Section 145 of the Code. The brief facts of the case are as under :-

A property being Property No. 4/262 alongwith its wada is situated in Zampa Falia, Olpad in Tal. : Olpad, District : Surat. Wada is situated towards West of the residential property. Thereafter, there is a public road and thereafter, there is a school building.

3. The first respondent claimed before the learned Executive Magistrate that three shops have been constructed and they have been let on payment of rent on acceptance of the deposit. That the first respondent had paid an amount of Rs. 3000/- as deposit to the present petitioner and monthly rent was fixed at Rs. 250/-. That thereafter, opening ceremony was also organised on 25th October, 1984 and thereafter, the first respondent has been running his business in the said shop since then. That therefore, he is a legal tenant and in possession of the said shop since 1984.

4. That the first respondent also claimed before the learned Magistrate that the present petitioner behaved in a high handed manner. That he had thrown away his goods from the said shop and he was himself thrown away from the said shop. That the petitioner also applied two locks on the said shops. That therefore, the petitioner dispossessed the first respondent without due procedure of law and therefore, an application was made by him under Section 145 of the Code for immediate restoration of possession by way of summary remedy under Section 145 of the Code.

5. After hearing the parties, the learned Magistrate found that the first respondent had failed to prove his case and therefore, the case was dismissed.

6. Feeling aggrieved by the said judgement and order by the learned Magistrate, the first respondent preferred Criminal Revision Application No. 126/2000 under Section 397 of the Code before the Sessions Court.

7. The learned Session Judge heard the matter, and allowed the Revision Application. The learned Sessions Judge set aside the order of the learned Executive Magistrate dated 12th November, 1999 and held that

present respondent no. 1 was in possession of the said shop at the relevant point of time and therefore, the learned Sessions Judge directed that the possession of the said shop be handed over by the present petitioner to respondent no. 1. The said order was passed by the learned Sessions Judge on 27th July, 2000.

8. Feeling aggrieved by the said judgement and order of the learned Sessions Judge, the present petitioner has preferred this Revision Application under Section 397 of the Code.

9. It is mainly contended that the matter has been conducted like a Civil Suit and that the learned Sessions Judge has passed the order in question without due and proper application of mind. It is also contended that the learned Sessions Judge has not taken into account the fact that there was disputed question of fact. That the learned Sessions Judge ought not have relied upon the evidence led by respondent no. 1 before the lower Court. That on the whole, the judgement and order passed by the learned Sessions Judge are illegal and erroneous and deserve to be set aside.

10. It is therefore, prayed that the present Revision Application be allowed and the judgement and order of the learned Sessions Judge in Criminal Revision Application No. 126/2000 be quashed and set aside and the order of the learned Executive Magistrate be restored.

11. On receiving the Revision Application, notices were issued. Shri K.B. Padia, learned advocate appears for respondent No. 1 and Shri S.P. Dave, Ld. APP for the State of Gujarat. I have heard the learned advocates for both the sides and have perused the papers.

12. Mr. R.M.Vin, learned advocate appearing on behalf of petitioner has argued at length. He has stated that the learned Sessions Judge has not properly applied her mind while allowing the Revision Application of the first respondent. It is also his argument that there are disputed questions of fact about the tenancy and the learned Sessions Judge has erred in deciding the same.

13. Now, on going through the order of the learned Executive Magistrate and on going through the judgement and order passed by the learned Sessions Judge, it appears that there is some dispute about the tenancy right of the first respondent. The first respondent has come out with a case that he is a tenant in respect of the said shop at a monthly rent of Rs. 250/- and that he

has also paid an amount of Rs. 3000/- as deposit to the present petitioner.

14. Now, this will be the question of fact, which may be dealt with in appropriate case before the appropriate Court, which is required to deal with the issue of tenancy between the landlord and tenant and decision about the alleged tenancy right of the first respondent. Naturally, it would be open to the petitioner to go to the appropriate court for getting a decision that the first respondent is not a tenant in respect of the shop in question. Same way respondent no. 1 may also approach the appropriate court of competent jurisdiction to get decision to the effect that he is a tenant in respect of the shop in question. Even, if the present matter is decided one way or other, the decision in such criminal matter under Section 145 of the Cr. P.C. would be subject to the decision of the Civil Court or a Rent Tribunal under Section 28 of the Bombay Rents, Hotel and Lodging Houses (Rates) Control Act, 1947.

15. When the learned Sessions Judge has dealt with the matter at length, I am of the view that it is not found to be just and proper to decide this issue of facts in this Revision Application. It is therefore, just and proper to leave the parties to obtain appropriate orders from the appropriate courts and the parties to the Revision Application should be left to get decision from the courts of competent jurisdiction.

16. Under the aforesaid facts and circumstances of the case, this Revision Application is ordered to be disposed of accordingly. The parties will be at liberty to file appropriate litigation before the appropriate court of competent jurisdiction and to obtain appropriate orders. If, such litigation is filed, then the said Court may deal with it and decide the said case according to law. Notice is discharged.

(D.P. Buch, J.)

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